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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/548,084

09/06/2005

Kenji Tsubota

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EXAMINER

ROST, ANDREW J

ART UNIT

PAPER NUMBER

3753

MAIL DATE

DELIVERY MODE

04/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/548,084	<b>Applicant(s)</b> TSUBOTA ET AL.	
	<b>Examiner</b> Andrew J. Rost	<b>Art Unit</b> 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2009 and 18 February 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-5, 7 and 8 is/are allowed.
- 6) ☒ Claim(s) 1 and 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/13/2009 has been entered.

2. Claim 1 is currently amended. No claims have been canceled. No claims have been newly added. Presently, claims 1-8 are pending.

### ***Specification***

3. The terms "working member in automatically opening and closing" and "moved by automatically opening and closing means" are taken to mean a working member that is moved by any means other than by manual operation.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Fukano (US 2003/0201015 A1).

Regarding claim 1, Fukano discloses a fluid control device having a valve case (12) with a fluid channel (28), a casing (16), a valve element (78), a valve element holder (80) which is moved in order to operate the valve element, an elastic member (60, 96) biasing the valve element toward a closed position, a working member (76, 72, 108) for automatically opening and closing the valve member and a working member (18) for manual opening and closing which is able to press the valve element into a closed position wherein the working member (18) for manual opening and closing is movably fitted (fitted around the outside) to the working member (76, 72, 108 and portion that is affixed to support ball 118) in automatic opening and closing. Fukano further discloses wherein the working member in manual opening and closing (18) and the working member in automatic opening and closing (76, 72, 108) operate by moving in the same direction (the diaphragm 78 is displaced from the valve seat 30 while both the working member 18 and the working member 72,76,108 are moved in a direction away from the valve seat and the diaphragm 78 is pressed against the seat 30 by either the spring bias pressing the working member 72, 76, 108 toward the valve seat 30 or the displacement of the working member 18 toward valve seat 30).

In regards to claim 6, Fukano discloses the working member for manual operation is a stem-shaped member (stem 126) that is moved by manual operation from

a position in which the working member presses the valve element into a closed position (fig. 5) and a position in which the working member is spaced from the automatically operated working member (76, 72, 108) in order to allow for operation of the valve element (fig. 1).

***Allowable Subject Matter***

6. Claims 2-5, 7 and 8 are allowed.

***Response to Arguments***

7. Applicant's arguments filed 2/18/2009 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the working member for manual opening and closing being movably fitted within the working member for automatic opening and closing) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the reference fails to show the working members open and close the valve in the same direction as each other, Fukano further discloses wherein the working member in manual opening and closing (18) and the working member in automatic opening and closing (76, 72, 108) operate by moving in

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the same direction (the diaphragm 78 is displaced from the valve seat 30 while both the working member 18 and the working member 72,76,108 are moved in a direction away from the valve seat and the diaphragm 78 is pressed against the seat 30 by either the spring bias pressing the working member 72, 76, 108 toward the valve seat 30 or the displacement of the working member 18 toward valve seat 30).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew J. Rost whose telephone number is 571-272-2711. The examiner can normally be reached on 7:00 - 4:30 M-Th and 7:00 - 12:00 Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. J. R./  
Examiner, Art Unit 3753

/Stephen M. Hepperle/  
Primary Examiner, Art Unit 3753